IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

ARBITRATION PETITION NO.421 OF 2007

Citicorp Finance (India) Ltd. ...Petitioner.
Vs.
M/s. P.K. Earthmovers & Anr. ...Respondents.
....
Ms.Shakuntala Joshi i/b.S.I. Joshi for the Petitioner.
None for the Respondents.
.....

CORAM :DR.D.Y.CHANDRACHUD, J.
November 27, 2007.

P.C.:

The Petitioner has provided a loan of Rs. 35.80 lakhs to the First Respondent under a Loan cum Hypothecation Agreement entered into on 26th April 2006. The loan was repayable with interest at the rate of 9% per annum in 36 monthly instalments. Clause 5 of the agreement provides for the events of default and clause 6 provides for the rights of the Petitioner on default including repossession of the asset. Clause 16 provides for arbitration. The Respondents have executed an irrevocable Power of Attorney in favour of the Petitioner inter alia to take possession of the

hypothecated vehicle in case of default under the Loan cum Hypothecation agreement. There has been a default on the part of the Respondents. As on the date of the filing of the petition, an amount of Rs. 28.71 lakhs, approximately, was due and payable. The Petitioner has invoked the arbitration clause.

The Respondents have been served. An affidavit of service has been filed. No reply has been filed to the Arbitration Petition. In these proceedings under Section 9 of the Arbitration and Conciliation Act, 1996, the Petitioner has sought the appointment of the Court Receiver as Receiver of the hypothecated machinery which consists of a Tata Hitachi make Excavator. In the absence of any defence or contest by the Respondents, the averments contained in the petition would have to be accepted. There has been a default in the payment of the outstanding dues. It would, therefore, be necessary to safeguard the interest of the Petitioner by appointing the Court Receiver as receiver of the hypothecated machinery. The appointment of the Receiver is necessary in order to ensure that the machinery is not wasted or alienated, thereby defeating the rights of

the Petitioner. Hence the following order :

(1) Pending the hearing and final disposal of the arbitration proceeding, the Court Receiver is appointed as receiver in respect of the machinery, more particularly described in Exhibit G to the petition;

(2) The Court Receiver as well as the Advocate for the Petitioner shall communicate a copy of this order to the Respondents forthwith;

(3) Within a period of four weeks from the date of the communication of the order, the Respondents shall be at liberty to inform the Receiver that they are desirous of acting as agents of the Receiver. The Respondents shall then be appointed by the Court Receiver as agents subject to security and royalty. The Receiver shall determine the quantum of security and royalty having regard to the terms and conditions contained in the Loan cum Hypothecation Agreement (Exhibit A to the Petition);

(4) In the event that the Respondents do not communicate their willingness to the Receiver to act as agents within the period stipulated, it would be open to the Receiver to take forcible

possession of the hypothecated machinery, more particularly described in Exhibit G and apply thereupon to the Court for further orders by submitting a report;

(5) Until the Receiver takes possession, there shall be an interim injunction, restraining the Respondents from alienating, parting with possession or encumbering or creating any third party right in respect of the machinery in Exhibit G.

The Arbitration Petition is accordingly disposed of.

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